

UNITED STATES DISTRICT COURT

for the

Eastern District of Michigan



In re DMCA Subpoena to CLOUDFLARE, Inc.

Plaintiff

v.

Civil Action No.

*Defendant***SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

CLOUDFLARE, INC.

To:

(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: **SEE EXHIBIT "A"**

Place: Silverstein Legal
30150 Telegraph Road, Suite 444
Bingham Farms, MI 48025

Date and Time:

06/01/2021 4:27 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: _____

CLERK OF COURT

OR

*Signature of Clerk or Deputy Clerk*_____
Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* _____, who issues or requests this subpoena, are:

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____
_____ *Server's signature*

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

EXHIBIT "A"

All information sufficient to identify the operator and/or owner of the website located at eroticax.org (the "Infringing Website"), specified in the attached notice dated April 19, 2021 from any and all sources, including but not limited to billing or administrative records that show the name(s), address(es), telephone number(s), email address(es), IP address(es), account number(s), credit card numbers and any other electronic or physical documents identifying the name(s) and address(es) or contact information of the operator and/or owner of the Infringing Website.

Subject: Notice of Copyright and Trademark Infringement
Date: Monday, April 19, 2021 at 1:22:34 PM Eastern Daylight Time
From: Corey Silverstein
To: abuse@ispiria.net
CC: [REDACTED]
Priority: High
Attachments: Copyright and Trademark Infringement Cease and Desist re EroticAx.org Final.pdf

Dear Sir/Madam,

Please review the attached Notice of Copyright and Trademark Infringement and take immediate action to rectify this matter.

Please confirm that the unlawful content has been removed.

Thank you.

Very Truly Yours,
Corey D. Silverstein
SILVERSTEIN LEGAL
30150 Telegraph Rd., Suite 444
Bingham Farms, MI 48025
(248) 290-0655
(248) 645-1222 (Fax)
(248) 645-8205 (Alternate Fax)
Email: corey@silversteinlegal.com
Skype: corey.silverstein

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ELECTRONIC SIGNATURE

Nothing contained in this email is intended to form an electronic signature unless a specific statement to the contrary is included in this email.

Subject: Second Notice of Copyright and Trademark Infringement
Date: Tuesday, April 27, 2021 at 2:58:58 PM Eastern Daylight Time
From: Corey Silverstein
To: abuse@ispiria.net

Priority: High

Attachments: Copyright and Trademark Infringement Cease and Desist re EroticAx.org Final.pdf

Dear Sir/Madam,

Please review the attached Notice of Copyright and Trademark Infringement and take immediate action to rectify this matter.

Be advised that this is now your second notice of this infringement and my client is prepared to utilize all of its legal options.

Please confirm that the unlawful content has been removed.

Thank you.

Very Truly Yours,
Corey D. Silverstein
SILVERSTEIN LEGAL
30150 Telegraph Rd., Suite 444
Bingham Farms, MI 48025
(248) 290-0655
(248) 645-1222 (Fax)
(248) 645-8205 (Alternate Fax)
Email: corey@silversteinlegal.com
Skype: corey.silverstein

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ELECTRONIC SIGNATURE

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E-MAIL: COREY@SILVERSTEINLEGAL.COM

April 19, 2021

Sent via Email

SCALAXY-AS, NL
abuse@ispiria.net

Re: Unauthorized Use and Infringement of Intellectual Property at eroticax.org

To Whom It May Concern:

We represent Les Technologies Seedbox, Gamma Entertainment Inc., Digigamma B.V., and Gamma Billing Inc. (collectively, "Gamma").

We hereby provide notice of copyright infringement under the terms of the Digital Millennium Copyright Act ("Act") and notice of trademark infringement.

Gamma is the owner and operator of the website located at www.eroticax.com ("Website"). The Website contains the following works ("Works"): all content located on the Website and the Website's "look and feel." Gamma is also the owner of the common law trademark in EROTICAX ("Mark").

Based on our research and information we have received from Cloudflare, we have determined that you are hosting the website located at www.eroticax.org ("Copycat Website"). The Copycat Website infringes Gamma's rights in the Works and the Mark by cloning the Website and registering and using a domain name that incorporates the Mark in its entirety without Gamma's authorization.

As you can see by a review of the Website and the Copycat Website, the Copycat Website is a clone of the Website, including the content, the code, the directories, and the "look and feel" of the Website. In fact, the Copycat Website falsely represents to third parties that it is owned and operated by Gamma.

The Website is protected under the copyright laws of the United States; which protection is extended by international treaty. Your customer neither asked nor received permission to clone the Website. Nor did your customer ask or receive permission to make or distribute copies of the Website. This conduct amounts to a willful infringement of Gamma's rights under United States law for which you are secondarily liable for as the host of the Copycat Website.

In addition, the Copycat Website is substantially similar or an imitation of the Website, which infringes Gamma's trade dress rights in violation of 15 U.S.C. § 1114. Additionally, the Copycat Website's use and display of the "look and feel" of the Website has caused confusion and mistake among customers

To Whom It May Concern
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and third parties thinking that the Copycat Website was affiliated with the Website in violation of 15 U.S.C. § 1125.

We have a good faith belief that the use of the Works described in this letter is not authorized by the copyright owner, any agent, or any applicable law. The information in this letter is accurate. We swear under penalty of perjury that we are authorized to act on behalf of Gamma with respect to the subject matter of this letter.

We thus request that you promptly remove or disable access to the Website as stated in 17 U.S.C. § 512(c)(1)(C). Please contact the undersigned no later than 48 hours from the date of this letter to confirm that the infringing Website has been removed or access disabled. The undersigned may be contacted at the address, telephone number, and email address in the header on the first page of this letter.

In addition, we hereby demand that you promptly cease and desist from using the Mark and any other terms or phrases that are confusingly similar to the Mark in connection with your business activities.

The above is not an exhaustive statement of all the relevant facts and law. Gamma expressly reserves all its legal and equitable rights and remedies, including the right to seek injunctive relief and recover monetary damages, attorney's fees, and costs.

Very truly yours,

SILVERSTEIN LEGAL

/s/Corey D. Silverstein

Corey D. Silverstein

cc: Client

